United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: June 14, 1996

TO : William C. Schaub, Regional Director
Region 7

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Detroit Newspapers f/k/a 530-6067-4033-0100
Detroit Newspapers Agency 530-8063-0100
Case 7-CA-38184 530-8063-0150

and

Detroit Newspapers f/k/a
Detroit Newspapers Agency,
The Detroit News, Inc.,
and The Detroit Free Press
Case 7-CA-38185

This memorandum supplements our previous memorandum in the instant cases, dated April 10, 1996. In that memorandum, we instructed the Region to issue complaint alleging that the Employer violated Section 8(a)(1) and (5) of the Act by employing replacements for unfair labor practice strikers at terms and conditions of employment different than those of the strikers they replaced.

In our primary theory of violation, we drew a distinction between an employer's use of economic weapons during economic and unfair labor practice strikes. This is because "the Board should not have a rule which assists the wrong-doing employer, whose actions are necessarily found to be in violation of the Act, to continue to reap the benefits of the unlawful practices at the expense of the striking employees and their union."[1] Supporting this rationale, we cited two lines of cases in our previous memorandum in the instant cases: (1) those that make it unlawful to permanently replace unfair labor practice

[1] Detroit Newspapers, et al., Case 7-CA-38184, et al., Advice Memorandum dated April 10, 1996, p. 7.

strikers;[2] and, (2) those that make it unlawful for an employer to lock out unit employees in support of unlawful bargaining positions or other unfair labor practices, thereby replacing those employees, even temporarily.[3]

We now add another line of cases to provide further support for our theory of violation in the instant cases -- those that make it unlawful for an employer to reduce its bargaining proposals based on economic leverage it gained during an unfair labor practice strike.[4] As is our rationale in the instant cases, these cases are explicitly based on the conclusion that an employer should not be allowed to benefit from any increased economic leverage that results from a strike caused by the employer's unfair labor practices. Similarly, these cases explicitly distinguish unfair labor practice strikes from economic strikes, in which an employer is permitted to make regressive proposals based upon perceived bargaining

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[2] See, e.g., Columbian Enameling & Stamping Co., 1 NLRB 181, 198-199 (1936) ("It would be futile simply to order the respondent to bargain with the union . . ."); The Timken Silent Automatic Co., 1 NLRB 335, 345 (1936) ("If the damage occasioned by respondent's failure to bargain is to be repaired, if the discrimination is to cease, and if the resulting interference with the organizational activity of the employees is to be removed, the men who have thus been illegally supplanted must be returned to work . . ."); Rabhor Co., 1 NLRB 470, 480 (1936) (quoting Columbian Enameling & Stamping Co., supra). See also, e.g., Jeffery-De Witt Insulator Co., 1 NLRB 618, 626 (1936) ("no effective relief would be granted" unless unfair labor practice strikers are offered immediate reinstatement, displacing their replacements if necessary).

[3] See, e.g., Branch International Services, Inc., 310 NLRB 1092, 1103-1105 (1993), and cases cited therein.

[4] See, e.g., Storer Communications, Inc., 294 NLRB 1056, 1056, 1094 (1989); Harowe Servo Controls, Inc., 250 NLRB 958, 961 (1980).

strength gained during the strike.[5] Thus, the Board's well-established rule that an employer violates Section 8(a)(1) and (5) of the Act by attempting in bargaining to exploit a strike caused by its own unfair labor practices, as it may an economic strike, provides a strong analogue to our primary theory of violation in the instant cases.

Accordingly, the Region should rely on this line of cases as additional support for the allegation in the outstanding complaint that the Employer violated Section 8(a)(1) and (5) of the Act by employing replacements for unfair labor practice strikers at terms and conditions of employment different than those of the strikers they replaced.

B.J.K.

[5] See, e.g., Transport Service Co., 302 NLRB 22, 32 (1991); Hendrick Manufacturing Co., 287 NLRB 310, 310-311 (1987); Barry-Wehmiller Co., 271 NLRB 471, 472-473 (1984).